Lim Eye Thun v Majlis Peguam Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–1314 OF 2005
LOW HOP BING, ABDUL MALIK ISHAK AND WAN ADNAN MUHAMAD JJCA
3 DECEMBER 2009

Administrative Law — Remedies — Declaration — Employee's application for declaration that domestic inquiry and suspension order were null and void — Whether High Court judge had rightly exercised his discretion in refusing declarations sought — Whether declarations sought centred on issues that were spent

Labour Law — Employment — Suspension — Domestic inquiry into allegations of misconduct — Employee's application for declaration that domestic inquiry and suspension order were null and void — Dismissal of employee — Whether plaintiff's misconduct warranted dismissal from employment — Whether first defendant's termination of plaintiff's employment validly effected pursuant to s 98(3) of the Legal Profession Act 1976

Legal Profession — Professional discipline — Misconduct — Domestic inquiry into allegations of misconduct — Plaintiff's failure to attend domestic inquiry — Whether second defendant could institute any disciplinary action against plaintiff — Whether right to institute disciplinary action could be shared jointly between first and second defendants

The plaintiff was appointed as a director of the complaints secretariat by the first defendant, pursuant to a letter of appointment dated 11 September 2001. The letter of appointment issued to the plaintiff contained a clause on termination which provided that the first defendant had the right to terminate the plaintiff's services summarily in cases of 'misconduct'. On 20 June 2005, a joint decision was taken by the Lembaga Tatatertib Peguam-Peguam, the second defendant, and the first defendant to suspend the appellant for misconduct. On the same day, the defendants issued to the plaintiff a notice of domestic inquiry notifying the plaintiff that a decision had been made to constitute a domestic inquiry into the allegations of misconduct against the plaintiff ('the domestic inquiry'). The plaintiff informed the second defendant in writing that since the latter was not her employer, it had no right to institute any disciplinary proceedings against the plaintiff. The plaintiff thus requested that the domestic inquiry be

discontinued and the suspension against her withdrawn. When the defendants refused to accede to the plaintiff's request, she filed an application by way of an originating summons in the High Court for, inter alia, a declaration that the domestic inquiry against her was null and void, a declaration that the suspension order against her was null and void and costs. The plaintiff thereafter took the stand that she would not be attending the domestic inquiry because she had filed the originating summons against the defendants. On 16 August 2005, the domestic inquiry found the plaintiff guilty of all six charges made against her and based on this the first defendant terminated the plaintiff's appointment with immediate effect. On 27 September 2005, the High Court took the position that the termination of the employee's contract of employment was carried out by the first defendant pursuant to s 98(3) of the Legal Profession Act 1976 ('the Act') and dismissed the plaintiff's application. The High Court also stressed that there was no legal obligation on the part of the first defendant to set up an inquiry into the allegations of misconduct. Aggrieved by that decision, the plaintiff appealed to this court. In her appeal, the plaintiff raised the issue that the first defendant was the plaintiff's employer and as such, only the latter could institute any disciplinary action against the plaintiff and that such right cannot be shared jointly between the first and second defendants. The main issue for determination in this appeal was whether the first defendant's termination of the plaintiff's employment was validly effected pursuant to s 98(3) of the Act.

Held, dismissing the application:

(1) (per **Low Hop Bing JCA**) Although the constituting of the inquiry was neither prohibited nor required under the provisions of the Act generally and s 98(3) of the Act specifically, the first and second defendants had gone the extra mile to conduct an inquiry in order to give the plaintiff every opportunity to answer the six charges preferred against her in line with the fundamental rules of natural justice. As such the inquiry could not have contravened s 98(3) of the Act or the plaintiff's contract of employment. Further, the first defendant had not delegated, to the inquiry, the power of revoking the plaintiff's appointment but had instead made a decision in accordance with its power to revoke the plaintiff's appointment pursuant to s 98(3) of the Act after having received the finding of the inquiry (see para 23).

(2) (per **Abdul Malik Ishak JCA**) Where an employee commits gross misconduct, the employer is justified in dismissing the employee after giving the employee an adequate opportunity to refute the charges framed against the employee. The facts and circumstances of each case must be considered in determining whether an employee's misconduct warrants dismissal from employment. The misconduct complained of in the instant case included insubordination and absenteeism which are

serious charges. In this case the domestic inquiry was the avenue for the plaintiff to refute all the six charges of misconduct laid against her (see paras 43–45 & 48).

(3) (per **Abdul Malik Ishak JCA**) Although the plaintiff questioned the fact that the domestic inquiry was conducted jointly by both defendants, the fact remained that the dismissal of the plaintiff was carried out by the first defendant employer, after the domestic inquiry had found the plaintiff guilty of all the six charges leveled against her. Further, as the plaintiff carried out the functions for the second defendant it would be reasonable for the second defendant to be involved in conducting the domestic inquiry. This was not a case where a third party took over the role to discipline the plaintiff. It should also be borne in mind that the second defendant was a body established under the Act and so it was only natural that it would be involved in the domestic inquiry. The plaintiff ought to have raised her objections as to the issue of the threshold jurisdiction during the domestic investigation by the domestic inquiry but instead the plaintiff chose not to attend the inquiry (see paras 52, 55–56 & 58).

(4) (per **Abdul Malik Ishak JCA**) The domestic inquiry was an administrative exercise intended to give the plaintiff an opportunity to provide her explanation and defence to the charges against her. In the present case, the domestic inquiry was conducted and proceeded as scheduled but the plaintiff failed to attend it on the grounds that she had filed an application in the High Court, for the inquiry and her suspension to be declared null and void. Although the court has wide discretionary powers to intervene by way of declaration, in the circumstances the trial judge had rightly exercised his discretion in refusing the declarations sought by the plaintiff (see paras 53, 60 & 64–65).

(5) (per **Low Hop Bing JCA** and **Abdul Malik Ishak JCA**) The first defendant was the plaintiff's employer and it had the legitimate right to terminate the plaintiff's services, which it did by way of a letter of termination of service. Under s 47 of the Interpretation Acts 1948 and 1967, the power to appoint carries with it the power to revoke that appointment. In the instant appeal, there was no question of the inquiry usurping the powers of the first defendant in revoking the plaintiff's appointment under s 98(3) of the Act. The power to revoke the plaintiff's appointment was exercised by the first defendant, as clearly manifested when the first defendant issued the letter of termination of the plaintiff's employment dated 22 August 2005 (see paras 21, 26 & 59).

(6) (per **Abdul Malik Ishak JCA**) The issues that were raised and the reliefs prayed for by the plaintiff became academic. The declarations sought

centred on the issue of the domestic inquiry and the suspension of the employment but these issues were spent because the appellant's services had been terminated and the plaintiff had no real interest in the declarations (see paras 66–67).

[Bahasa Malaysia summary

Plaintif, telah dilantik sebagai pengarah sekretariat aduan oleh defendan pertama, menurut surat pelantikan bertarikh 11 September 2001. Surat pelantikan yang dikeluarkan kepada plaintif mengandungi fasal penamatan yang memperuntukkan bahawa defendan pertama mempunyai hak untuk menamatkan perkhidmatan plaintif secara terus dalam kes-kes 'salah laku', Pada 20 Jun 2005 satu keputusan bersama telah diambil oleh Lembaga Tatatertib Peguam-Peguam, defendan kedua, dan defendan pertama untuk menggantung perayu kerana salah laku. Pada hari yang sama defendan-defendan telah menyerahkan kepada plaintif satu notis siasatan domestik memberitahu plaintif bahawa satu keputusan telah dibuat untuk membentuk siasatan domestik untuk dakwaan-dakwaan salah laku terhadap plaintif ('siasatan domestik'). Plaintif memberitahu defendan kedua secara bertulis bahawa memandangkan defendan kedua bukan majikannya ia tiada hak untuk memulakan apa-apa prosiding tatatertib terhadap plaintif. Plaintif dengan itu memohon agar siasatan domestik tersebut tidak diteruskan dan penggantungan terhadapnya ditarik balik. Apabila defendan-defendan enggan bersetuju dengan permohonan plaintif, dia telah memfailkan satu permohonan melalui saman pemula di Mahkamah Tinggi untuk, antara lain, satu deklarasi bahawa siasatan domestik terhadapnya adalah terbatal dan tidak sah, satu deklarasi bahawa perintah penggantungan terhadapnya adalah terbatal dan tidak sah dan kos. Plaintif selepas itu membuat pendirian bahawa dia tidak akan menghadiri siasatan domestik itu kerana dia telah memfailkan saman pemula terhadap defendan-defendan. Pada 16 Ogos 2005, siasatan domestik itu mendapati plaintif bersalah terhadap keenam-enam pertuduhan terhadapnya dan berdasarkan ini defendan pertama telah menamatkan pelantikan plaintif dengan serta merta. Pada 27 September 2005, Mahkamah Tinggi mendapati bahawa penamatan kontrak pekerjaan pekerja itu telah dijalankan oleh defendan pertama menurut s 98(3) Akta Profesyen Undang-Undang 1976 ('Akta') dan menolak permohonan plaintif. Mahkamah Tinggi juga menekankan bahawa tiada kewajipan sah di pihak defendan pertama untuk mengadakan siasatan terhadap dakwaan-dakwaan salah laku. Berasa terkilan dengan keputusan tersebut plaintif telah merayu ke mahkamah ini. Dalam rayuannya plaintif menimbulkan isu bahawa defendan pertama merupakan majikan plaintif dan oleh itu hanya majikan plaintif sahaja yang boleh memulakan apa-apa tindakan tatatertib terhadap plaintif dan hak tersebut tidak boleh dikongsi bersama antara defendan-defendan pertama dan kedua. Isu utama untuk ditentukan dalam rayuan ini adalah sama ada penamatan defendan pertama

terhadap pekerjaan plaintif telah dilaksanakan secara sah menurut s 98(3) Akta. A

Diputuskan, menolak permohonan:

(1) (oleh **Low Hop Bing HMR**) Meskipun pelaksanaan siasatan itu tidak dilarang atau diperlukan di bawah peruntukan Akta secara amnya dan s 98(3) Akta secara khususnya, defendan-defendan pertama dan kedua telah bersusah payah untuk melaksanakan siasatan bagi tujuan memberikan plaintif peluang untuk menjawab keenam-enam pertuduhan yang dibuat terhadapnya sejajar dengan rukun asas keadilan asasi. Oleh itu siasatan tersebut tidak mungkin bertentangan dengan s 98(3) Akta atau kontrak pekerjaan plaintif. Bahkan, defendan pertama tidak mengagihkan, dalam siasatan tersebut, kuasa untuk membatalkan pelantikan plaintif tetapi sebaliknya telah membuat keputusan menurut kuasanya untuk membatalkan pelantikan plaintif menurut s 98(3) Akta setelah menerima penemuan siasatan tersebut (lihat perenggan 23). B C D

(2) (oleh **Abdul Malik Ishak HMR**) Di mana seorang pekerja telah melakukan salah laku yang melampau, majikan mempunyai justifikasi untuk memecat perayu setelah memberikan pekerja peluang yang memadai untuk menyangkal pertuduhan-pertuduhan yang dibuat terhadap pekerja itu. Fakta dan keadaan setiap kes hendaklah dipertimbangkan dalam menentukan sama ada salah laku pekerja mewajarkan pemecatan daripada pekerjaan. Salah laku yang diadukan dalam kes ini termasuklah keingkaran dan ketidakhadiran yang merupakan pertuduhan-pertuduhan serius. Dalam kes ini siasatan domestik merupakan jalan untuk plaintif menyangkal kesemua enam pertuduhan salah laku terhadapnya (lihat perenggan 43–45 & 48). E F

(3) (oleh **Abdul Malik Ishak HMR**) Meskipun plaintif mempersoalkan bahawa siasatan domestik itu dijalankan secara bersama oleh kedua-dua defendan, hakikatnya pemecatan plaintif masih dilaksanakan oleh majikan defendan pertama, setelah siasatan domestik itu mendapati plaintif bersalah terhadap keenam-enam pertuduhan terhadapnya. Selanjutnya, oleh sebab plaintif telah melaksanakan fungsi-fungsi itu bagi pihak defendan kedua, maka adalah munasabah bagi defendan kedua terlibat dalam menjalankan siasatan domestik itu. Ini bukan kes di mana pihak ketiga mengambil alih peranan untuk mendisiplinkan plaintif. Ia juga perlu diingat bahawa defendan kedua adalah badan yang ditubuhkan di bawah Akta dan oleh itu menjadi kelaziman ia akan terlibat dalam siasatan domestik. Plaintif patut menimbulkan bantahannya berhubung isu bidang kuasa semasa siasatan domestik dijalankan tetapi sebaliknya plaintif memilih untuk tidak hadir siasatan tersebut (lihat perenggan 52, 55–56 & 58). G H I

(4) (oleh **Abdul Malik Ishak HMR**) Siasatan domestik adalah amalan pentadbiran yang bertujuan untuk memberikan plaintif peluang memberikan penjelasan dan pembelaannya terhadap pertuduhan-pertuduhan yang dibuat terhadapnya. Dalam kes ini, siasatan domestik telah dilaksanakan dan diteruskan seperti yang ditetapkan tetapi plaintif gagal untuk menghadirinya atas alasan bahawa dia telah memfailkan permohonan ke Mahkamah Tinggi, agar siasatan tersebut dan penggantungannya diisytiharkan terbatal dan tidak sah. Meskipun mahkamah mempunyai kuasa budi bicara yang luas untuk campur tangan melalui deklarasi, dalam keadaan demikian hakim perbicaraan telah melaksanakan budi bicara sewajarnya dalam menolak deklarasi-deklarasi yang dipohon oleh plaintif (lihat perenggan 53, 60 & 64–65).

(5) (oleh **Low Hop Bing HMR** dan **Abdul Malik Ishak HMR**) Defendan pertama merupakan majikan plaintif dan mempunyai hak yang sah untuk menamatkan perkhidmatan plaintif, yang telah dilakukannya melalui surat penamatan perkhidmatan. Di bawah s 47 Akta Tafsiran 1948 dan 1967, kuasa untuk melantik juga membawa bersamanya kuasa untuk membatalkan pelantikan tersebut. Dalam rayuan ini, tiada persoalan tentang siasatan tersebut merampas kuasa-kuasa defendan pertama dalam membatalkan pelantikan plaintif di bawah s 98(3) Akta. Kuasa untuk membatalkan pelantikan plaintif telah dilaksanakan oleh defendan pertama, sepertimana dinyatakan dengan jelas apabila defendan pertama mengeluarkan surat penamatan pekerjaan plaintif bertarikh 22 Ogos 2005 (lihat perenggan 21, 26 & 59).

(6) (oleh **Abdul Malik Ishak HMR**) Isu-isu yang ditimbulkan dan relief-relief yang dipohon oleh plaintif telah menjadi akademik. Deklarasi-deklarasi yang dipohon berkisarkan isu tentang siasatan domestik dan penggantungan pekerjaan tetapi isu-isu tersebut adalah sia-sia kerana perkhidmatan perayu telahpun ditamatkan dan plaintif tiada kepentingan sebenar dalam deklarasi-deklarasi tersebut (lihat perenggan 66–67).]

Notes

For a case on suspension, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) para 1136.

For cases on declaration, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 500–571.

For cases on misconduct, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1844–1916.

Cases referred to

Barnard & Ors v National Dock Labour Board & Anor [1953] 1 All ER 1113, CA (refd)

Borneo Post Sdn Bhd, The v Margaret Wong [2001] 8 CLJ 758, HC (refd)
Cheah Foong Chiew v Lembaga Jurutera Malaysia [1999] 3 MLJ 110, CA (refd)
Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29, FC (refd)
Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor [1979] 2 MLJ 101, FC (refd)
Holiday Inn, Kuching v Lee Chai Siok Elizabeth [1992] 1 MLJ 230; [1992] 2 CLJ 521 (Rep), HC (refd)
Laws v London Chronicle (Indicator Newspapers), Ltd [1959] 2 All ER 285, CA (refd)
London Transport Executive v Clarke [1981] ICR 355, CA (refd)
Milan Auto Sdn Bhd v Wong Seh Yen [1995] 3 MLJ 537, FC (refd)
Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd [2006] 5 MLJ 113, FC (refd)
Norwest Holst Ltd v Department of Trade & Ors [1978] 3 All ER 280, CA (refd)
SR Tewari v District Board Agra AIR 1964 SC 1680 (refd)
Union of India & Anor v WN Chadha AIR 1993 SC 1082 (refd)
Vine v National Dock Labour Board [1957] AC 488, HL (distd)
Wiseman & Anor v Borneman & Ors [1969] 3 All ER 275, HL (refd)
Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal [1995] 2 MLJ 753, FC (refd)

Legislation referred to

Industrial Relations Act 1967 s 20(1)
Interpretation Acts 1948 and 1967 s 47
Legal Profession Act 1976 s 98(1), (2), (3), (5)
Rules of the High Court 1980 O 15 r 16
Specific Relief Act 1950 s 41

Appeal from: Originating Summons No R1–24–63 of 2005 (High Court, Kuala Lumpur)

Zainur Zakaria (Puspawati Rosman with him) (Onn & Partners) for the appellant.
Sivabalah (E Reena with him) (Shearn Delamore & Co) for the defendants.

Low Hop Bing JCA:

APPEAL

[1] On 27 September 2005, the Kuala Lumpur High Court dismissed with costs the appellant's ('the plaintiff's') originating summons. This is the

plaintiff's appeal against that decision.

FACTUAL BACKGROUND

[2] The factual background is substantially uncontroverted.

[3] The plaintiff was appointed by the Bar Council ('the first defendant') vide letter dated 11 September 2001 as director of complaints and was attached to the Advocates and Solicitors Disciplinary Board ('the second defendant'). Paragraph 10 of the letter states, inter alia, that 'the Bar Council reserves the right to terminate your services summarily in cases of misconduct'.

[4] The first and second defendants, vide letter dated 20 June 2005, signed by the president of the first defendant and the chairman of the second defendant, notified the plaintiff that the first defendant in conjunction with the second defendant decided to constitute a domestic inquiry ('the inquiry') against the plaintiff in relation to six charges of misconduct viz:

Charge No. 1

> Gross negligence and dereliction of duty in respect of Complaint No DB/04/0194 (Re: Jacy Lau Aik Fong) wherein an erroneous order dated 31 March 2005, which was prepared by you and/or under your supervision, suspending an 'advocate and solicitor', was issued and sent out from the Disciplinary Board on the same day under a cover letter signed by you.

Charge No. 2

> Gross negligence and dereliction of duty in respect of Complaint No DC/04/0158 (Re: Abdul Malik bin Mat Judi) wherein an erroneous Order dated 31 March 2005, which was prepared by you and/or under your supervision, suspending the said Advocate and Solicitor was issued and sent out from the Disciplinary Board on the same day under a cover letter signed by you.

Charge No. 3

> Indifferent attendance at work and absent at all board meetings since 26 April 2005 on the basis of your proposed resignation duly recorded by the Board but subsequently purporting to resume full duties as Director since 13 June 2005 without any reference or explanation.

Charge No. 4

> Insubordination in purporting to take disciplinary action against a staff of the Disciplinary Board, without reference to the Chairman of the Disciplinary Board, by issuing two memoranda dated 14 June 2005 to the Senior Legal Officer, Ms

Tomis Peter Samat knowing that the matters complained of therein were undertaken on the instruction of the Chairman of the Disciplinary Board.

Charge No. 5

Insubordination in relation to relocation of staff working place that had previously been decided upon by the Chairman of the Disciplinary Board and the AFSC.

Charge No. 6

Insubordination in seeking a return of files that the Chairman of the Disciplinary Board had directed be kept under lock and key, thereby knowingly countermanding the directions of the chairman.

[5] On 19 July 2005, a notice of inquiry, signed by the chairman thereof, was issued to the plaintiff, informing the plaintiff of the hearing date ie 27 July 2005 at 10am in Room 3 of the premises of the second defendant, in relation to the aforesaid six charges. The letter also stated that 'in the event that you absent yourself, the inquiry reserves the right to proceed as scheduled and arrive at a decision thereat'. Copies of the notice were extended to the president of the first defendant and the chairman of the second defendant.

[6] Pending the inquiry, the first and the second defendants suspended the plaintiff from work with immediate effect.

[7] Vide letter dated 20 July 2005, the chairman of the inquiry notified the plaintiff that the hearing of the inquiry would be held, at the same place as previously stated, at 4pm on 27 July 2005 and not at 10am as stated in the letter dated 19 July 2005, and that if the plaintiff failed to attend, the inquiry 'reserves the right to proceed as scheduled and arrive at a decision thereat'. Copies thereof were also extended to the president of the first defendant and the chairman of the second defendant.

[8] On 27 July 2005, the plaintiff made an application for postponement on the ground that the plaintiff needed more time to prepare the defence. Hearing was postponed to 15 and 16 August 2005.

[9] On 1 August 2005, the plaintiff's solicitors wrote to the second defendant, challenging the jurisdiction of the second defendant to conduct the inquiry and calling for it to be discontinued, in addition to the withdrawal of the plaintiff's suspension.

[10] Vide letter dated 3 August 2005, the solicitors for the first and second defendants responded that the defendants could not accede to the plaintiff's request. The defendants' solicitors added that the inquiry 'is being carried out by the disciplinary board in conjunction with the Bar Council'.

[11] On 15 August 2005 ie the first day of the inquiry, the plaintiff was absent. In the circumstances, the inquiry proceeded as scheduled and found the plaintiff guilty of all the charges.

[12] Vide 'Notice of Termination of Employment' dated 22 August 2005, the first defendant notified the plaintiff of the finding of the inquiry, and informed the first defendant that 'due to the seriousness of the misconduct, your employment is hereby terminated with immediate effect'.

[13] Consequently, the plaintiff commenced the originating summons, which sought a declaration that the inquiry conducted and the orders made by the defendants against the plaintiff were null and void. The plaintiff's originating summons was dismissed by the High Court.

[14] Hence, the instant appeal by the plaintiff.

DISCIPLINARY POWERS

[15] Learned counsel, Mr Zainur Zakaria (assisted by Ms Puspawati Rosman) submitted for the plaintiff that the first defendant was the employer of the plaintiff and so under s 98(3) of the Legal Profession Act 1976 ('s 98(3)'), only the first defendant has the right to terminate the employment of the plaintiff qua employee. Support was sought in *SR Tewari v District Board Agra* AIR 1964 SC 1680; and *Vine v National Dock Labour Board* [1957] AC 488 (HL) (a reference hereinafter to a section is a reference to that section in the Legal Profession Act 1976).

[16] Defendants' learned counsel, Mr N Sivabalah (Ms E Reena with him), took the position that the termination of the employee's contract of employment was carried out by the first defendant pursuant to s 98(3). They stressed that there is no legal obligation on the part of the first defendant to set up the inquiry, referring to *Wong Yuen Hock v Syarikat Hong Leong*

Assurance Sdn Bhd and another appeal [1995] 2 MLJ 753 (FC); and *Milan Auto Sdn Bhd v Wong Seh Yen* [1995] 3 MLJ 537 (FC).

[17] The learned High Court judge agreed with the submission presented for the defendants and upheld the termination of the plaintiff's employment.

[18] We are of the view that the question that arises for determination in the instant appeal may be formulated as follows:

> On the basis of the aforesaid factual background, was the first defendant's termination of the plaintiff's employment or revocation of the plaintiff's appointment as director of complaints validly effected pursuant to s 98(3)?

[19] Section 98 which regulates, inter alia, the appointment of the plaintiff and the revocation thereof merits reproduction as follows:

> 98 Director of the Complaints Secretariat
>
> (1) The Bar Council shall, from time to time as may be required, appoint an advocate and solicitor of not less than five years standing to the office of the Director of the Complaints Secretariat.
>
> (2) The Director shall serve as the Secretary to the disciplinary board, the Disciplinary Committee and the Investigating Tribunal.
>
> (3) The Bar Council shall be responsible for the remuneration of the Director and shall have the power to revoke his appointment.
>
> (4) The Director shall be responsible for the daily administration of complaints against advocates and solicitors under this Part.

[20] In the instant appeal, the first and second defendants have conjunctively taken the 'trinity of actions' viz:

(a) suspension of the plaintiff from work as director of complaints;

(b) constituting the inquiry; and

(c) revocation of the plaintiff's appointment.

[21] The first and second defendants' suspension of the plaintiff from work as director of complaints illustrates the singularly significant 'hands-on' participation by the first defendant. Although the second defendant has been established pursuant to s 93(1), and, the plaintiff as director of complaints is also the secretary to the second defendant under s 93(5) and s 98(2), the plaintiff is nonetheless a full-time employee of the first defendant. The first defendant is vested with the power to appoint the plaintiff as director of complaints: s 98(1). This power to appoint carries with it the power to revoke

the appointment; see *SR Tewari*, where the Allahabad Supreme Court held that the power to appoint ordinarily carries with it the power to terminate appointment, and a power to terminate may, in the absence of restrictions express or implied, be exercised subject to the conditions prescribed in that behalf by the authority competent to appoint. In Malaysia, this principle is given statutory expression in s 47 of the Interpretation Acts 1948 and 1967 in the following words:

> Power to appoint includes power to remove, etc
>
> 47 Where a power to make an appointment is conferred by any written law, the appointing authority shall also have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint or re-instate any person appointed in the exercise of the power.

[22] The 'hands-on' participation by the first defendant in suspending the plaintiff from work is in line with the powers of the first defendant as an employer.

[23] Next, the constituting of the inquiry is neither prohibited nor required under the provisions of the Legal Profession Act 1976 generally and s 98(3) specifically. Apparently, in industrial law, high authorities have shown that the constituting of the inquiry is not a strict legal requirement; see *Wong Yuen Hock* (FC); and *Milan Auto Sdn Bhd* (FC). Be that as it may, the first and second defendants had gone the extra mile to do so in order to give the plaintiff every opportunity to answer the six charges preferred against her in line with the fundamental rules of natural justice. The inquiry has been entrusted with the specific responsibility only to investigate the basis, if any, of the charges. The chairman of the inquiry, a retired judge of our High Court, has enhanced the elements of integrity, independence and impartiality. In the absence of any express or implied prohibition in the constituting of the inquiry, we are unable to see how the inquiry could have contravened s 98(3) or the plaintiff's contract of employment. The inquiry had not been given the power to revoke the plaintiff's appointment. That power is expressly conferred upon the first defendant. The first defendant has not delegated, to the inquiry, the power of revoking the plaintiff's appointment. Having received the finding of the inquiry, the first defendant has made a decision in accordance with its power to revoke the plaintiff's appointment pursuant to s 98(3).

[24] We now proceed to consider *Vine*, which was cited for the plaintiff. There, a dock labourer was employed in the reserve pool by the defendants, the National Dock Labour Board, under the scheme set up by the Dock Workers (Regulation of Employment) Order 1947. The labourer was allocated work with a stevedoring company but failed to report to them. A

complaint lodged with the defendants was heard by a disciplinary committee appointed by the local dock labour board, who upheld the complaint and, purporting to act under cl 16(2)(c) of the Order, gave the plaintiff notice to terminate his employment with the defendants. His appeal to a tribunal set up under the scheme was dismissed. He started proceedings against the defendants claiming damages for wrongful dismissal and a declaration that his purported dismissal was illegal, ultra vires and void. Ormerod J awarded him damages and granted a declaration. The Court of Appeal held that damages were a sufficient remedy and that a declaration should not be granted. On appeal to the House of Lords, it was held that the plaintiff's dismissal was invalid, since the local dock labour board had no power under the scheme to delegate their disciplinary powers to a disciplinary committee.

[25] We find that the facts in *Vine* are clearly distinguishable from those in the instant appeal. There, the employing authority was the National Dock Labour Board. However, the disciplinary committee was not appointed by the National Board, but by the local board. The notice to terminate the employment was also given by the local board. The local board had no power to delegate disciplinary powers to a disciplinary committee. By contrast, in the instant appeal, the first defendant is an active 'hands-on' participant in the 'trinity of actions'. The notice of termination of the plaintiff's employment was issued by the first defendant. Hence, *Vine* is not supportive of the plaintiff's submission herein.

[26] In the instant appeal, there is no question of a stranger or the inquiry usurping the powers of the first defendant in revoking the plaintiff's appointment under s 98(3). The power to revoke the plaintiff's appointment has never been exercised by any other person. It was exercised by the first defendant, as clearly manifested when the first defendant issued the letter of termination of the plaintiff's employment dated 22 August 2005. The first defendant has clearly exercised the powers pursuant to s 98(3). These steps and actions taken by the first defendant were validly effected under s 98(3).

CONCLUSION

[27] On the foregoing grounds, we hold that the plaintiff has failed to show any merit in this appeal. We answer the above question in the affirmative. The learned judge's decision is affirmed. This appeal is dismissed with costs of RM5,000 to the first defendant. Deposit to the first defendant on account of the said costs.

[28] My learned brother, Abdul Malik Ishak JCA has also prepared his judgment in support of mine.

Abdul Malik Ishak JCA:

[29] The plaintiff appellant was appointed by the first defendant respondent (Majlis Peguam Malaysia) as a director of the complaints secretariat pursuant to s 98(1) of the Legal Profession Act 1976 (Act 166). While the second defendant respondent (Lembaga Tatatertib Peguam-Peguam) is a body established under the said Act.

[30] The duties of the plaintiff appellant included the administration of the complaints secretariat, organisation of members for appointment to the various panels of the investigating tribunals and disciplinary committees, co-ordinating sittings of these panels, arranging for brief summaries of decisions made against advocates and solicitors and forwarding them to the Bar Council from time to time and such other duties as may be necessary in order to ensure the efficient working of the disciplinary system under the Legal Profession Act 1976 (Act 166).

[31] It was emphasised that the plaintiff appellant was, at all material times, an employee of the first defendant respondent pursuant to a letter of appointment dated 11 September 2001 as seen at pp 65–67 of the record of appeal.

[32] On 20 June 2005, the second defendant respondent issued a letter to the plaintiff appellant suspending her for misconduct. The decision to suspend the plaintiff appellant was taken jointly by both the first and second defendants respondents. On the same day, the second defendant respondent in conjunction with the first defendant respondent issued to the plaintiff appellant a notice of domestic inquiry notifying the plaintiff appellant that both the defendants respondents have decided to constitute a domestic inquiry into the allegations of misconduct against the plaintiff appellant.

[33] By letters dated 19 July 2005 and 20 July 2005, the second defendant respondent notified the plaintiff appellant that a domestic inquiry into the alleged charges of misconduct against the plaintiff appellant will be conducted on 27 July 2005.

[34] On 1 August 2005, the solicitors for the plaintiff appellant wrote to the second defendant respondent intimating that the latter was not the employer of the plaintiff appellant and, consequently, had no right in law to suspend the plaintiff appellant and to institute any disciplinary proceedings against the plaintiff appellant. The second defendant respondent rejected

outright the plaintiff appellant's request for the domestic inquiry to be discontinued and the suspension withdrawn.

[35] In submitting that there was an employer employee relationship between the plaintiff appellant and the first defendant respondent, it was emphasised that the plaintiff appellant's salary was paid by the first defendant respondent and the latter also contributed to the plaintiff appellant's EPF and SOCSO. And the first defendant respondent also agreed that at its discretion, bonus will be paid to the plaintiff appellant in accordance with the letter of appointment.

[36] The letter of appointment contains a clause on termination. It reads as follows:

> TERMINATION NOTICE
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> During the period of probation, either party can give the other twenty-four (24) hours notice in writing without assigning any reasons, but upon confirmation either party can terminate the employment by giving the other one (1) month notice in writing without assigning any reasons but the Bar Council reserves the right to terminate your services summarily in cases of 'misconduct'.

[37] On 9 August 2005, the plaintiff appellant filed an application by way of an originating summons in the High Court seeking the following reliefs:

(a) a declaration that the on-going domestic inquiry against the plaintiff appellant is null and void;

(b) a declaration that the order suspending the plaintiff appellant made on 20 June 2005 is null and void;

(c) costs; and

(d) further or other relief as may be deemed necessary by the honourable court.

[38] Motivated by the filing of the originating summons in the High Court, the plaintiff appellant through her solicitors wrote, on 15 August 2005, a letter to the solicitors of the second defendant respondent stating that since the plaintiff appellant has filed the originating summons, the plaintiff appellant will not be attending the domestic inquiry scheduled on 15 August 2005 and on 16 August 2005.

[39] On 16 August 2005, the domestic inquiry found the plaintiff appellant guilty of all the six charges made against her. And on 22 August 2005, the first defendant respondent terminated the plaintiff appellant's appointment with immediate effect.

[40] On 27 September 2005, the learned judge of the High Court dismissed the plaintiff appellant's originating summons forthwith. Aggrieved by that decision, the plaintiff appellant appealed to this court.

[41] Six charges of misconduct were laid before the plaintiff appellant and they have been set out by my learned brother, Low Hop Bing JCA in his well written judgment. This is my supporting judgment to the impeccable judgment of my learned brother, Low Hop Bing JCA and I agree fully with His Lordship's judgment without any reservation.

[42] I had occasion to say something about misconduct when I was sitting on the High Court bench in the case of *Siti Sarinah bt Sibun v Azizah bt Kamaruddin & Anor* [2009] 5 MLJ 824; [2009] 5 AMR 745. At p 836 of the MLJ report and at pp 755–756 of the AMR report, this was what I said:

> [36] The Industrial Court defined 'misconduct' in *Plaat Rubber Sdn Bhd v Goh Chok Guan* [1995] 1 ILR 79 in this way:
>
> > Misconduct means such act or conduct as adversely affects employees duties towards the employer. The misconduct complained of must have the same relations with the employees duties or the work entrusted to him by the employer or his competency to perform the same. Any breach of an express or implied duty on the part of the employee, unless it be of a trifling nature, would amount to misconduct.
>
> [37] And the burden of proving misconduct justifying dismissal lies with the employer and it would be based on the balance of probabilities (*Telekom Malaysia Kawasan Utara v Krishnan Kutty a/l Sanguni Nair & Anor* [2002] 3 MLJ 129; [2002] 3 CLJ 314; [2002] 3 AMR 2898 (CA)). According to Lord James of Hereford in *Clouston & Co Ltd v Corry* [1906] AC 122 (PC) at p 129:
>
> > There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal.

[43] Every employee has an obligation to faithfully discharge his duty to his employer. Where an employee commits gross misconduct, the employer is justified in dismissing the employee after giving the employee an adequate opportunity to refute the charges framed against the employee. Here, the domestic inquiry was the avenue for the plaintiff appellant to refute all the six charges laid against her.

[44] Not all misconduct warrants dismissal. In determining whether an employee's misconduct warrants dismissal from employment, an appraisal of all the facts and circumstances of each individual case must be undertaken.

[45] An employee is expected to obey the lawful and reasonable orders of the employer. The sixth charge against the plaintiff appellant makes reference to insubordination by countermanding the directions of the chairman. That was a serious charge. The failure to obey the lawful and reasonable orders of the chairman will certainly be a material breach of the letter of appointment. Lord Evershed MR in *Laws v London Chronicle (Indicator Newspapers), Ltd* [1959] 2 All ER 285 at p 287 (CA) had this to say about wilful disobedience:

> ... wilful disobedience of a lawful and reasonable order shows a disregard — a complete disregard — of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master and that, unless he does so, the relationship is, so to speak, struck at fundamentally.

[46] Siti Norma Yaakob FCJ (later Chief Judge of Malaya) in *Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd* [2006] 5 MLJ 113 (FC) spoke of the fundamental implied duty of an employee in relation to his employer. This was what Her Ladyship said at p 123 of the report:

> [31] Working as instructed is the employee's basic consideration under a contract of employment just as providing remuneration is the basic consideration of his employer. However the employee's duty to comply is confined to all the lawful and reasonable orders of his employer in respect of the performance of such functions that falls within the scope of his contract of employment. Whether the employer's orders are lawful and reasonable would depend very much on the terms and conditions of the contract and the character of employment. The term 'lawful and reasonable order' is often used to describe the order given and in this context it means primarily an order which is reasonably within the ambit of the employment in question so that, in any given dispute much or all will depend on the terms of the individual contract of employment. The employer thus cannot give an order outside the proper scope of the employment.

[47] Continuing at p 124 of the report, Her Ladyship aptly said:

> [36] The duty of an employee at common law is also similar in that he is to comply with all lawful and reasonable orders given by his employer with respect to the performance of such functions within the scope of his employment. That duty is one of the fundamental obligations which are deemed to be impliedly undertaken in every contract of hiring. The duty of obedience at common law is subject to two qualifications, firstly that the employer may not order his employee to do something illegal or secondly order his employee to do anything dangerous.

> [37] However, it may well be that an employee is caught in the situation that he is required to obey an order and he is doubtful whether the order is legal or not. Under those circumstances, the proper course is for the employee to obey the order first and to challenge its legality in separate proceedings. This distinction is made on the basis that if the law allows the employee to disobey any order he thinks is not legal, it would be impossible for the management to maintain discipline and industrial peace. On the other hand, if the employee takes upon himself to disobey the order which he thinks to be unlawful and unreasonable two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take the matter further in proceedings against his employer or to complain to his union. If he disobeys, he must take the risk if the court finds the order to be lawful and reasonable. See the case of *Pan Global Textiles Bhd, Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27.

[48] Absenteeism forms the basis of the third charge. And I need to quote a passage from the book by OP Malhotra entitled *The Law of Industrial Disputes*, (5th Ed), Vol 2 at p 905, germane to the occasion at hand:

> No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The mere fact that he had applied for leave would not be a good defence when the leave was refused by the employer in exercise of his discretion, unless it could be shown that the action taken was actuated by the desire to victimise the workman. The fact that the workman was continuously absent from work without leave on account of his detention in jail for an offence, will not give an immunity to the workman to remain absent without leave and the employer will be justified in discharging him from service.

[49] Then there is a speech by Lord Denning MR in the case of *London Transport Executive v Clarke* [1981] ICR 355 (CA) at p 365, when His Lordship said succinctly as follows:

> I would ask this question: can an employee take off — go absent without leave — for six months and on returning say to his employer: 'You have not dismissed me. I want my job back.' If the employer refuses to take him back, can the man say: 'By your refusal you have dismissed me. Now I claim for unfair dismissal.' Surely in such a case, by taking off for six months without leave, the man has dismissed himself. If this be correct when he takes off for six months, it should also be for two months, or as here for seven weeks. The reason is because it is completely inconsistent with the continuance of his contract that he should take so long a time off. In some cases the employer will have replaced him by some other man or have got his work done by others. In other cases he may have left his work undone. But whichever it is, the employer cannot reasonably be expected to take him back. The man will himself have terminated his contract of employment.

[50] The above mentioned passage certainly applies aptly to the plaintiff appellant in relation to the third charge. A

[51] Now, the plaintiff appellant has raised the issue that the first defendant respondent was the employer of the plaintiff appellant and only the employer can initiate disciplinary action against the plaintiff appellant and that such right cannot be shared jointly between the first defendant respondent and the second defendant respondent. B

[52] The plaintiff appellant questioned the domestic inquiry that was conducted jointly by both the defendants respondents. But one must not lose sight of the fact that the dismissal of the plaintiff appellant was carried out by the first defendant respondent — the employer itself. My learned brother, Low Hop Bing JCA rightly said that the 'power to appoint carries with it the power to revoke the appointment' and that has been done by the first defendant respondent after the domestic inquiry had found that the plaintiff appellant was guilty of all the six charges levelled against her. C D

[53] It seems to me that the domestic inquiry that was conducted, was meant to obtain and evaluate the evidence relating to the allegations of misconduct against the plaintiff appellant. It was also intended to give an opportunity to the plaintiff appellant to provide her explanation and defence accordingly. The domestic inquiry was more in the nature of an administrative action in order to determine whether the allegations have any basis whatsoever. In the words of Lord Denning MR in the case of *Norwest Holst Ltd v Department of Trade & Ors* [1978] 3 All ER 280 at p 292 (CA), 'The inspectors are not to decide rights or wrongs. They are to investigate and report'. E F

[54] The domestic inquiry must be regarded as nothing more than an administrative exercise. It was not quasi judicial in nature and, that being the case, only a preliminary decision was made which did not decide finally the rights of the plaintiff appellant (*Wiseman & Anor v Borneman & Ors* [1969] 3 All ER 275 (HL); and *Union of India & Anor v WN Chadha* AIR 1993 SC 1082). In fact, the decision of the learned judge of the High Court in dismissing the plaintiff appellant's originating summons decided the fate of the plaintiff appellant and it is from that decision that we are now concerned with. G H

[55] It must be borne in mind that the plaintiff appellant carried out the functions for the second defendant respondent and so, it would be reasonable to say that the second defendant respondent ought to be involved in conducting the domestic inquiry. Having perused through the six charges, I can safely conclude that they are all related to the functions and I

responsibilities of the plaintiff appellant as the director of the complaints secretariat. In that capacity, the plaintiff appellant 'shall serve as the secretary to the disciplinary board' (the second defendant respondent) (see s 98(2) of the Legal Profession Act 1976 (Act 166)) and that would explain the involvement of the second defendant respondent in the domestic inquiry.

[56] This was not a case where a third party has taken over the role to discipline the plaintiff appellant. By way of an administrative process, the first defendant respondent was involved in the domestic inquiry proceedings side by side with the second defendant respondent. It must be borne in mind that the second defendant respondent is a body established under the Legal Profession Act 1976 (Act 166) and so it was only natural that the second defendant respondent was involved in the domestic inquiry.

[57] In regard to the jurisdiction of the domestic tribunal to hear the six charges against the plaintiff appellant, reference to the case of *Cheah Foong Chiew v Lembaga Jurutera Malaysia* [1999] 3 MLJ 110 (CA) should be made. There Shaik Daud JCA speaking for this court, had this to say at p 113 of the report:

> It is clear from this decision that as a matter of judicial policy, the normal rule is not for the court to intervene but to allow the domestic tribunal to proceed and decide the matter. It is clear that domestic tribunals can determine its own jurisdiction. It is for the applicant to raise the issue of jurisdiction before the tribunal itself which is capable of making a decision. In *R v Fulham, Hammersmith and Kensington Rent Tribunal; ex p Zerek* [1951] 2 KB 1, Devlin J at p 10 said:
>
> In my opinion, the argument on behalf of the applicant is based on a misconception of what it is that a tribunal in cases such as this is doing. When, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to their jurisdiction, the tribunal have to make up their minds whether they will act or not, and for that purpose, to arrive at some decision on whether they have jurisdiction or not.

[58] Any objection pertaining to the issue of the threshold jurisdiction during the domestic investigation by the domestic inquiry should be raised there. But unfortunately, the plaintiff appellant and her counsel chose not to attend the domestic inquiry.

[59] It cannot be denied that only the employer of the plaintiff appellant has the right to terminate her services. In this context, the first defendant respondent was the employer and has the legitimate right to terminate the plaintiff appellant's services. And this was done by way of a letter of termination of service dated 22 August 2005 pursuant to s 98(3) of the Legal Profession Act 1976 (Act 166).

[60] I say that the failure to conduct a domestic inquiry or the carrying out of a flawed domestic inquiry would not affect the dismissal of an employee (*Milan Auto Sdn Bhd v Wong Seh Yen* [1995] 3 MLJ 537 (FC); and *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal* [1995] 2 MLJ 753 (FC)). Here, the domestic inquiry was conducted and proceeded as scheduled notwithstanding the absence of the plaintiff appellant and her counsel.

[61] It is ideal to mention that pursuant to the termination of her services by the first defendant respondent, the plaintiff appellant had made a representation for reinstatement under s 20(1) of the Industrial Relations Act 1967 (Act 177). Her case has since been registered in the Industrial Court vide Case No 1214–372 of 2007. Section 20(1) of the Industrial Relations Act 1967 (Act 177) reads as follows:

> 20 Representations on dismissals
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> (1) Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.

[62] One striking feature of s 20(1) of the Industrial Relations Act 1967 (Act 177) is that it enables an unfairly dismissed employee to seek reinstatement to his former position before the grievance can be adjudicated. It centres on dismissal without just cause or excuse. According to the case of *Holiday Inn, Kuching v Lee Chai Siok Elizabeth* [1992] 1 MLJ 230; [1992] 2 CLJ 521 (Rep) (HC), a representation for reinstatement under s 20(1) of the Industrial Relations Act 1967 (Act 177) can never be converted for compensation in lieu of reinstatement. According to the case of *The Borneo Post Sdn Bhd v Margaret Wong* [2001] 8 CLJ 758, the omission of the claimant to plead reinstatement did not preclude the Industrial Court from hearing and determining the case.

[63] In this appeal, we are not concerned about the issue of reinstatement under s 20(1) of the Industrial Relations Act 1967 (Act 177). We are only concerned about the decision of the learned judge of the High Court that was delivered on 27 September 2005. But it cannot be denied that the representation to the Industrial Court by the plaintiff appellant reflects to a large extent the acceptance by the plaintiff appellant that the first defendant respondent had terminated her services. Consequently, the question of whether the domestic inquiry and the suspension of her employment is valid or otherwise has become an academic issue and is spent.

[64] It is trite that a declaration can be used in a 'wide range of circumstances' and in a 'wide variety of cases in terms of subject-matter' (per Raja Azlan Shah Ag LP (as His Majesty then was) in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (FC) at p 31). And in a proper and suitable case, where a person would otherwise be without any remedy for the injustice done to him, the court has a wide discretionary power to intervene by way of declaration (*Barnard & Ors v National Dock Labour Board & Anor* [1953] 1 All ER 1113 (CA)). Section 41 of the Specific Relief Act 1950 (Act 137) provides for a declaratory decree. And O 15 r 16 of the Rules of the High Court 1980 also makes provisions for a declaratory relief. They complement one another. Lee Hun Hoe CJ (Borneo) in *Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor* [1979] 2 MLJ 101 (FC) at p 107, aptly said:

> The prevailing view seems to be that the court's jurisdiction to make a declaratory order is unlimited subject only to its own discretion.

[65] The learned judge of the High Court has rightly exercised his discretion in refusing the declarations sought in the originating summons and I am in full agreement with him.

[66] The issues that were raised and the reliefs that were prayed for by the plaintiff appellant had become academic. The declarations sought centred on the issue of the domestic inquiry and the suspension of the employment. These issues are all spent. There is a passage from the judgment of Hashim Yeop A Sani CJ (Malaya) in *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh* [1992] 1 MLJ 147 at p 149, that merits reproduction. There His Lordship had this to say:

> As regards the first preliminary objection it is our view that the matter had indeed, by the time the originating summons came before the learned judge, become academic. There was no living issue before the learned judge. There was no longer any lawful recipient of any benefit of any declaration sought in the originating summons. Cases cited by the learned judge (*Sun Life Assurance Co of Canada v Jervis* [1944] AC 111; *Loknath Padhan v Birendra Kumar Sahu* AIR 1974 SC 505; and *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82) constitute ample authorities for the court not to act in vain. The respondent had by then no real interest in the declarations. It will be a complete waste of judicial time if the court were to deal with the merits of the application in the originating summons solely to determine the question of costs.

[67] Likewise here, the plaintiff appellant's services had been terminated and so 'there was no longer any lawful recipient of any benefit of any declaration sought in the originating summons'.

[68] It is my judgment that the learned judge of the High Court did not commit any error in coming to his decision.

[69] Always supportive of my learned brother, Low Hop Bing JCA and for the reasons adumbrated above, I now make those orders as made by His Lordship.

Application dismissed.

Reported by Kohila Nesan